IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.154 OF 2006

Ashok Jagjivandas Solanki ..Petitioner.

Vs.

Vipin K. Gandhi & Ors. ..Respondents.

Mr.Tushar Bhavsar with Mr.Sunil Shukla i/b.M/s.Shukla & Shukla for the Petitioner.

Mr.S.Kothari for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 13TH JUNE, 2006

P.C. :

The petition is admitted and is heard finally.

2. This is a petition under section 9 of the Arbitration and Conciliation Act, 1996. The arbitration proceedings have already commenced. The Petitioner is the Respondent before the learned arbitrator. The Petitioner seeks an order directing the Court Receiver to take back possession of a theatre and to put him in possession thereof and for certain other reliefs.

3. By an order dated 23.6.2005 Arbitration Petition No.200 of 2005 taken out by Respondent Nos.1 to 5

was disposed of in terms of the minutes of the order. Under clause 2 of the minutes of the order, the Arbitration Petition No.200 of 2005 was made absolute in terms of prayer (a) except the bracketed portion in terms of prayer (a)(iv). By virtue of the said order, the Court Receiver stood appointed of all the assets of the partnership firm, inclusive of the immoveable property described in Exhibit "B" thereto, alongwith the theatre building and other structures. The Receiver also had the power to collect all the income receivable, including income from the canteen. By the said minutes of the order, the Court Receiver was directed to call for bids from the parties and to appoint the highest bidder as his agent. Clause 3 of the said order reads as under :

> "3. (a) The Court Receiver, High Court Bombay to call for bid within 2 weeks or such time as may be fixed from the Petitioners and the Respondents or any of them for appointing him/them as his Agent.
>
> (b) The Court Receiver to accept the highest bid and appoint the highest bidder as his agent.
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> (c) The agent shall be liable to pay salary, taxes electricity bills, general

> maintenance and all other outgoings to run the said theatre, from the date of the appointment of the Court Receiver High Court Bombay as receiver."

4. Prior to the order; the Petitioner was in possession of the said property and was therefore appointed as an agent of the Court Receiver. Subsequently, upon Respondent Nos.1 to 5 having bid higher than the Petitioner, they were appointed as the Receiver’s agents.

5. The Petitioner entered into an agency agreement with the Court Receiver dated 21.9.2005. Respondent Nos.1 to 5 were appointed as the agents of the Court Receiver inter-alia to occupy the said premises and also to run the said cinema business. Under clause 4 of the agency agreement, Respondent Nos.1 to 5 agreed not to assign the benefit of the agreement to any third party.

6. It is alleged by the Petitioner that despite the agency agreement, Respondent Nos.1 to 5 have created third party interests in the said property. This allegation is based upon an agreement dated 4.10.2005 entered into between Respondent Nos.1 to 5

and one M/s.Iram Enterprises. Clauses 1, 3, 5(a) and 17 of the agreement read as under :

> "1. The Party of the FIRST PART shall allow the Party of the SECOND PART the exclusive playing time at ANKUR CINEMA situated at Govandi, Mumbai for a fixed period of 52 (Fifty Two weeks, the party of the FIRST PART shall exhibit a first run, repeat run pictures in Hindi, Marathi, English or in any other language that the party of the SECOND PART may supply for release and exhibit at the aid ANKUR CINEMA Govandi, Mumbai (hereinafter called the said theatre)"
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> "3. The Party of the SECOND PART has agreed to deposit with the Party of FIRST PART in the aggregate the sum of Rs.50,000/- (Rupees Fifty Thousand only) prior to the execution of this agreement. The said sum of Rs.50,000/- shall remain with the Party of the FIRST PART as Security Deposit for the due fulfillment of the Party of the SECOND PART to obligation hereunder and the same shall be refunded to the Party of the SECOND PART without interest on the expiry of this agreement, after deducting there from any amount that may be due by the Party of the SECOND PART to the Party of the FIRST PART."
>
> "5. .....
> .....
>
> a) The Party of the

> FIRST PART shall deduct the weekly minimum fixed share of collection of Rs.70,000/- (Rupees Seventy Thousand only)"
>
> "17. The Party of the SECOND PART shall become Associates member of C.E.A.I. or T.O.A. and shall pay all dues to the distributors and Indemnify and keep indemnified the party of the FIRST PART from all claims of the distributors and consequences arising from non-payment."

7. The agreement does not constitute a breach of the agency agreement or of the said order dated 23.6.2005. It is clear from the agreement and, in particular, clause 1 thereof, that M/s.Iram Enterprises only supplies the films for exhibition in the said theatre. The entire control of running the theatre and the business is with Respondent Nos.1 to 5. The mere fact that in clause 11 M/s.Iram Enterprises is permitted to put up certain theatre decorations and advertisements, does not constitute a breach of the agency agreement.

8. Further, by the said agreement, Respondent Nos.1 to 5 have not parted with possession of the said property to M/s.Iram Enterprises. This is clear

from clause 9 of the said agreement which reads as under :

> "9. The said theatre shall always be in the exclusive possession of the party of the FIRST PART and such possession shall not be disturbed by the party of the SECOND PART for any reason whatsoever nor shall it have any right whatsoever with respect to the management thereof. The exhibition at the theatre of the picture shall be under control and management of the party of the FIRST PART alone and the party of the SECOND PART shall have no say in that behalf at all."

9. It is pertinent to note that while the Petitioner was the agent of the Court Receiver, the Petitioner also entered into an identical agreement with the same party viz. M/s.Iram Enterprises. The Petitioner never sought leave from the Court or the Court Receiver to enter into the said agreement. It is further pertinent to note that the Petitioner did not even disclose the fact that he had entered into an identical agreement dated 30.6.2004. There is no explanation whatsoever for this conduct.

10. In the circumstances, the petition is

dismissed. The Petitioner shall pay the costs of this petition fixed at Rs.5000/- to Respondent Nos.1 to 5 within eight weeks from today.